IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V.RAMANA

WRIT PETITION NO : 34106 of 1997

Between:

K.Prabhakar Reddy S/o. K.V.Mani Reddy

Aged 39 years,R/o. Plot No.250, J.P.Nagar Colony,

Miyapur, Ranga Reddy District ..... PETITIONER

AND

1.. The Government of A.P.,

rep by its Secretary, Ind. & Comm.Department, Secretariat,

Hyderabad

2.. The District Forest Officer, Medak

3.. The Forest Range Officer, Narsapur

4.. Dy.Director of Mines and Geology, Nizamabad

5.. Asst.Director of Mines and Geology, Medak

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of writ of Mandamus declaring the action of

the respondents 2 and 3 in interfering with the quarrying operations of the petitioner and asking to stop the quarrying operations being carried out by the petitioner without any order or notice over an extent of 1.50 Hectares in Sy.No.181 of Khajipalli village, Jinnaram Mandal, Medak district as being illegal, unlawful and without any authority of law and unconstitutional

Counsel for the Petitioner: Smt N.SOBHA

Counsel for Respondent Nos 2 & 3.: G.P. FOR FOREST.

Counsel for Respondent Nos. 1, 4 & 5: G.P. FOR MINES & GEOLOGY.

The Court made the following :

ORDER:

The present writ petition is filed questioning the action of respondent Nos. 2 and 3 in interfering with the quarrying operations of the petitioner.

The facts which lead to filing the present writ petition, in brief, are that on the application made by the petitioner for grant of quarry lease for quarrying stone and road metal over an extent of 1.50 Hectares in Sy. No. 181, Khajipalli village, Jinnaram Mandal, Medak District, the Deputy Director of Mines and Geology, after a through survey and demarcation, granted a lease for a period of ten years in favour of the petitioner, vide his proceedings No. 2669/Q/96 dated 6-6-1996, and in pursuance thereof, a lease deed was executed on 18-10-1996, valid till 17-10-2006. While the lease granted is in subsistence, it is the case of the petitioner that respondent Nos. 2 and 3 started interfering with his quarrying operations and directed him to stop the quarrying operations. Hence, the present writ petition.

Heard the learned counsel for petitioner, the learned Government Pleader for Industries and the learned Government Pleader for Forests.

The learned counsel for the petitioner submitted that the subject land is classified as poramboke, which is covered by hills, and is not useful for cultivation, and that pursuant to the grant of lease, the petitioner invested huge amounts and established a stone-crushing unit, and has been operating the same without any complaint whatsoever from any quarter. While so, he states that respondent Nos. 2 and 3 without any power or authority started interfering with the quarrying operations of the petitioner, thereby causing much inconvenience and financial loss to the petitioner.

He submits that the Government
de-reserved Khajapalli village, vide G.O. Ms. No. 2204 dated 27-11-1970 from the forest area, and inasmuch as the lease granted to the petitioner in respect of the land in question, falls within the de-reserved forest area, respondent Nos. 2 and 3 have no manner of right whatsoever to interfere with the quarrying operations of the petitioner.

Respondent No.5, namely the Assistant Director of Mines and Geology, filed counter affidavit on his behalf and on behalf of respondent Nos. 1 and 4. The learned Government Pleader for Industries reiterating the counter averments, submitted that the subject land is classified as poramboke in the revenue records, and the same is covered by hills, and is unfit for cultivation. Without disputing the grant of lease by them to the petitioner in respect of the land in question for a period of 10 years, the learned Government Pleader, submitted that recently an extent of Ac. 1203.05 was notified as reserved forest under Section 4 of the A.P. Forest Act, 1967. He submitted that under Section 2 of the Forest (Conservation) Act, 1980, quarrying operations in the notified reserved forests is prohibited, and contended that if the area leased out to the petitioner falls within the recently notified reserved forest, the petitioner has no right whatsoever to carry on the quarrying operations.

The Divisional Forest Officer, Medak, filed counter-affidavit on behalf of respondent No.2. The learned Government Pleader for Forests representing him, reiterating the counter averments submitted that the lands covered by Survey Nos. 181,162, 163, 170 to 176 and 182 of Khajapalli village were supporting the forest growth, and the Government under Section 29 of A.P. (Telangana Area) Forest
Act 1355 F (Act II of 1355 F), vide orders issued in G.O. Ms. No.1899 F&A (Forest III), dated 15-7-1965, notified Ac.1576 of land in Khajapalli village as protected forest, and to support this submission, he produced a copy of the map. Out of total area of Ac. 1543.35 in Survey No.181, an extent of Ac.1203.5 was included in the reserve forest, and the remaining area in an extent of Ac. 340.30 was left outside the reserved forest, to meet the grazing needs of animals and the community needs of the villagers.

He contended that the Mandal Revenue Officer, Jinnaram, might have issued “No Objection Certificate” for grant of quarry lease to the petitioner in the balance area of Ac.340.30, which was left for meeting the grazing needs of animals and the community needs of the villagers. As the petitioner established the quarrying unit in

the area notified as reserved forest, a case was registered by the Forest Guard, Khajapalli vide Preliminary Offence Report No.11/94, dated 10-12-1996. Pursuant thereto, an inspection was conducted, and it was found that the petitioner established his stone-crushing unit in the area falling within the reserve forest, and therefore, the petitioner was called upon to shift his stone-crushing unit from the said spot.

He further submitted that the Government vide orders issued in G.O. Ms. No. 2204 dated 27-11-1970 de-reserved the land to an extent of about Ac. 60.00 in Sy Nos. 162, 170,171 and 181 of Khajapalli, and handed over the same to the Revenue Department on 18-9-1971. The petitioner's unit is located on hill slopes, which is having forest growth, and the extraction of metal by the petitioner is resulting in total dislocation of the established soils, large-scale soil erosion, and pollution and damage to the agricultural lands. He further submitted that the area in which the petitioner is carrying on quarrying operations is notified as reserve forest, and the Forest Department, being the guardian and custodian of forests, is bound to protect them, and the petitioner under the guise of conducting quarrying operations cannot be allowed to destroy the forests.

He submitted that as the petitioner established the stone-crushing unit in the area notified as forest area, he has to obtain No Objection Certificate from the Forest Department under the provisions of the Forest Act, 1967, and in the absence of the petitioner obtaining
No Objection Certificate from the Forest Department, any activity, much less the activity of quarrying, which is being conducted by the petitioner in the area reserved as forest area, is illegal and unlawful, and as such, the action of officials of the Forest Department in preventing the petitioner from conducting quarrying operations in the notified reserved forest, cannot be said to be illegal.

Heard learned counsel for petitioner, the learned Government Pleader for Industries, and the learned Government Pleader for Forests.

The Government in exercise of the powers conferred on them by Section 29 of the A.P. (Telangana Area) Forest Act, 1355 F, issued
G.O. Ms. No. 1899, Food and Agriculture (Forests-III) Department, dated 15-7-1965, declaring the land in an extent of Ac. 1576 covered by Sy. Nos. 162, 163, 170 to 176, 181 and 182 of Khajapalli village, as protected forest area. Out of the said

extent, an extent of Ac.340.30, it is said, was left outside the reserved forest to meet the grazing needs of animals and the community needs of the villagers. By orders dated
27-11-1970, issued by the Government in G.O. Ms. No. 2204, Food and Agriculture (Forest-I) Department, an extent of Ac. 1,23,886 of forest land in various districts was denotified from the forest area, which includes an extent of Ac. 60.00 in Sy. Nos. 162, 170, 171 and 181 of Khajapalli, and the same was handed over to the Revenue Department on 18-7-1971.

This being the status of the land, on the application made by the petitioner, the Deputy Director of Mines and Geology, had granted quarry lease to the petitioner in an extent of 1.50 hectares of land in Sy. No. 181 of Khajapalli village, Jinnaram Mandal, Medak District, for a period of ten years vide his proceedings No. 2669/Q/96, dated 6-6-1996, and there is no dispute about the same. Though the petitioner contends that pursuant to the quarry lease, he established a stone-crushing unit in the extent of land leased out to him in Sy. No. 181 of Khajapalli village, the same is disputed by the forest officials contending that the petitioner has established the stone-crushing unit in the area notified as forest area, and as quarrying operations being conducted by the petitioner are for non-forest purpose, which is prohibited in a reserve forest, they interfered with the quarrying operations of the petitioner. The Government in order to arrest deforestation, and for conservation of forests, created the Forest (Conservation) Act, 1980. Under Section 2 of the Forest (Conservation) Act, 1980, restriction on the dereservation of forests or use of forest land for non-forest purpose are imposed, and if any forest land or any portion thereof is sought to be used for any
non-forest purpose, or is sought to be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by the Government, the State Government can do so only after obtaining prior approval of the Central Government. Admittedly, the lease granted to the petitioner in the notified reserved forest by the Deputy Director of Mines and Geology, is without the prior approval of the Central Government. Leave alone the Deputy Director of Mines and Geology, even the State Government has no power whatsoever to grant lease to third parties in the notified reserved forest without prior approval of the Central Government. Inasmuch as no prior approval of the Central Government was obtained by the Deputy Director of Mines and Geology, before granting the lease in question in favour of the petitioner, the same cannot

have any legal force, and the petitioner cannot claim to have accrued any rights thereunder. A duty having been cast on the Forest Department to protect the notified forest area, no exception can be taken to the action of respondent Nos. 2 and 3 in taking steps to prevent the petitioner from conducting quarrying operations in a notified area pursuant to the lease granted by the Deputy Director of Mines and Geology, which is in violation of the provisions of the Forest (Conservation) Act, 1980.

For the foregoing reasons, there are no merits in the writ petition, and the same is accordingly dismissed. No costs.

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N.V.RAMANA,J

1-3-2005

TVK

..... REGISTRAR

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SECTION OFFICER

To

1.. The Government of A.P.,

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